



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed May 06, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on May 27, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether petitioner should be held liable for a \$983.25 overpayment of CC in August 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: [REDACTED]
Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. Petitioner was enrolled in the Child Care Program in 2014. She was employed with [REDACTED] which was the approved activity that made her eligible for child care.
3. Petitioner's employment ended on 7/31/14.
4. In August 2014, the agency paid her child care provider \$983.25 for services.
5. Petitioner reported the end of employment to the agency on 9/24/14. On that same date, she was hired by the [REDACTED].
6. On April 25, 2015, the agency issued a child care overpayment notice seeking to recover the \$983.25 for the month of August 2014.
7. Petitioner appealed.

DISCUSSION

All childcare funding distribution falls under the aegis of the Wisconsin Works (W-2) program, regardless of whether or not the applicant is actually a participant in W-2 activities. See WI Stat § 49.155(1m). Prior to November 24, 2003, any parent desiring to contest child care assistance overpayments was required to request a fact-finding review from the issuing W-2 agency. Effective November 24, 2003, the Department of Workforce Development changed the process to provide recipients of such assistance a fair hearing from the Division of Hearings & Appeals. See, *DWD Operations Memo*, #03-66. See also, WI Stat §49.195(3), § 49.152(2), & § 227.42, *et. seq.*

In a Fair Hearing concerning the propriety of an overpayment determination, the agency has the burden of proof to establish that the action it has taken was correct given the facts of the case. If the agency meets its burden, the petitioner must then rebut the agency's case and establish facts sufficient to overcome its evidence of correct action.

The ultimate question here is whether the petitioner received more child care benefits than to what she was entitled. Not every parent is eligible for W-2 child care services, even if they meet the financial criteria, as there are also nonfinancial eligibility criteria. A parent is eligible for child care services if she needs the care to attend W-2-approved school, to work, or to participate in W-2 activities. See Wis. Stat. §49.155(1m)(a).

Wisconsin Shares child care assistance is only available to individuals that are in Approved Activities. See *Child Care Policy Manual (Manual)*, §1.5.0, available online at <http://def.wisconsin.gov/childcare/wishares/pdf/chapter1.pdf>. Those Approved Activities include: Learnfare, High School, Unsubsidized Employment, Qualified Employers, Pre-Job Training, Apprenticeships, Sheltered Employment, Work Study, Youth Employment, Legitimate Self-Employment, Wisconsin Works or Tribal TANF Employment Position, FSET, Basic Education, Technical College or Course of Study Producing Employment.

Petitioner's only argument at the hearing was that the overpayment is error because she did not take her child to the daycare provider in the month of August. Petitioner suggests that if the provider billed the state for the fees then the provider's billing was error or misrepresentation.

The agency responded that petitioner had also informed them of this assertion when the overpayment was initially pursued. The agency indicated that it gave her the contact information for the subgroup handling provider investigations. Petitioner then contacted the provider investigation subgroup. The agency maintains the claim against petitioner as it states the best information available is the billing from the provider.

Having heard the testimony, I found petitioner's explanation to be reasonable and consistent with the prior statement to the agency. Petitioner appeared to me to be credible and I have no basis to find that she is being untruthful. Given that petitioner had previously provided this explanation to the agency, the agency could have sought the sign-in/sign-out sheets from the provider, or testimony from provider staff to rebut the petitioner's assertion. But, I am essentially being asked to believe the provider's billing over the petitioner's claim that her child did not attend and the provider is in error. I find it at least as likely that the provider billed in error. With no other evidence to show that the petitioner received services from the provider in August 2014 I am unwilling to uphold this overpayment.

CONCLUSIONS OF LAW

The Department did not meet its burden to prove that petitioner is liable for an overpayment of CC in August 2014.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency with direction to reverse the claim of overpayment in the amount of \$983.25, and to cease any collection activity, and to refund any sums already recouped. These actions shall be completed within 10 days of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

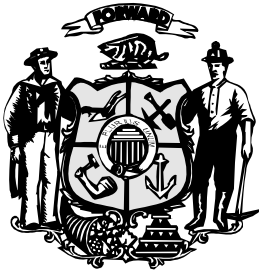
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison,

Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of
Madison, Wisconsin, this 21st day of
August, 2015

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on August 21, 2015.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit
Child Care Fraud